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MEMO ENDORSED

January 30, 2022

Via ECF

Hon. Barbara Moses, U.S.M.J.
United States District Court
Southern District of New York
500 Pearl St.
New York, NY 10007-1312

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**Re: Plaintiffs' Motion to Compel Production of Updated Name List and
Information Concerning the Posting of the Notice of Pendency as Set Forth by the
January 18 Court Order, Docket Entry No. 107
Chen et al v. Dun Huang Corp et al, No. 19-cv-11883 (GBD), (S.D.N.Y.)**

Dear Hon. Moses,

This office represents the Plaintiffs JINXIONG CHEN and CHAN YIN LAU in the above-captioned matter. We write respectfully and in accordance to the Court's Order dated January 18, 2022 (Docket Entry No. 107) to report that Defendants failed to comply with the Court Order.

Defendants failed to provide an updated contact list

The Court had clearly instructed Defendants to "provide an updated contact list including all current and past nonexempt kitchen and wait staff (full or part time) at Dun Huang Grand Central since the restaurant opened" by January 25, 2022. *See id.* ¶2. However, to date, Defendants have failed to do so. The Court also detailed that if "defendants do not have the full name or complete contact information for one or more former employees, they shall nonetheless provide whatever information they do have. Failure to provide such information may lead to significant sanctions." *See id.*

Defendants failed to provide confirmation that the posting was made in a conspicuous location at Dun Huang Grand Central

In addition, Defendants' counsel, Ge Qu, also failed to respond to both emails and phone calls to his office from Plaintiffs' counsels to attempt to address how the posting was not made in a "conspicuous location at Dun Huang Grand Central," despite being ordered to do so. *See id.* ¶1. Defendants' counsel has ignored Plaintiffs' counsel's inquiry as to: "Where is this posted in the restaurant specifically? When is this picture taken?" and provided a photograph of a poorly lit dilapidated wall. **See Exhibit 1 Photo of Posting dated January 18, 2022.** Thus, Plaintiffs highly believe that Defendants have failed to confirm "that the Notice of Pendency

was posted, in English in Chinese, in a conspicuous location at Dun Huang Grand Central.” *See* Docket Entry No. 107 ¶1.

Defendants should immediately comply with the order and the court should exercise its discretion to sanction Defendants to deter further noncompliance

The Court has already warned Defendants that “Failure to provide such information may lead to significant sanctions.” *See id.* 107 ¶2. Nevertheless, Defendants have willfully disregarded the Court’s order once again. *See* [Fed. R. Civ. P. 37\(b\)\(2\)\(A\)](#) (providing that failure to obey a discovery order is sanctionable by among other things, treating as contempt of court the failure to obey any order”)

Defendants have willfully disregarded various court deadlines. Defendants’ counsel made various troubling representations to the court during the telephone conference held on January 18, 2022. Defendants’ counsel admitted that there were employees who were part of the defined collective but nevertheless not provided as part of the name list. He also represented to the court that the notice of pendency should have been posted on Friday, January 14, 2022. He stated that he has photos from his clients of the posting in his possession. As a result, Your Honor ordered for the photos to be produced by end of day on January 18, 2022. However, the photo forwarded to us was dated January 18, 2022, the date of the conference and order.

Defendants’ course of conduct has already resulted in delay of the notice of pendency period and the discovery schedule, and Defendants are previously warned both during the January 18, 2022 conference and in the court order. Your Honor impressed upon the Defendants that: “Failure to provide such information [the updated name list] may lead to significant sanctions.” Defendants have once again ignored Your Honor’s order.

Plaintiffs respectfully request that Defendants: (1) provide information as to where the posting was made, and when it was first posted, and (2) immediately comply with the Court’s order.

We thank the Court for its attention to and consideration of this matter.

Respectfully submitted,

/s/ John Troy

John Troy

Aaron Schweitzer

Tiffany Troy

Attorney for Plaintiffs

cc: via ECF all counsel of record
JT/mh

The Court will conduct a teleconference regarding plaintiffs' unopposed application, as well as their February 5, 2022 request for approval of their reminder post card (Dkt. No. 109), on **February 10, 2022, at 12:00 noon**. At that time, the parties shall call (888) 557-8511 and enter the access code 7746387. Any response to the February 5 request must be filed by **February 9, 2022**. *See* Moses Ind. Prac. ¶ 2(e). SO ORDERED.



BARBARA MOSES

United States Magistrate Judge

February 7, 2022